

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 231 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

PARESHBHAI GUNWANTBHAI JOSHI

Versus

ZARINA SAIFUDDIN LOKHANDWALA

Appearance:

MR ZUBIN F BHARDA for Petitioner

MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 15/04/98

ORAL JUDGEMENT

Rule. This revision application is directed against the order dated 5.4.1997 passed by the Civil Judge (S.D.) Navsari below Exh. 21 rejecting the petitioner-plaintiff's application for amendment in the suit.

The plaintiff filed a suit praying for declaration and injunction against the respondent to the effect that the plaintiff has right of light and air in

the building being constructed adjoining to the house where the plaintiff is residing. The plaintiff has sought amendment in the suit incorporating the averment and the prayer claiming damages to the tune of Rs. 1,50,000/-. The application has been rejected on the ground that the amendment will lead to change of nature of the suit and also on the ground that there is a delay in filing the amendment application.

It is contended by Mr. Bharda that the learned judge has committed an error in rejecting the application for amendment in this suit ignoring the fact that the plaintiff had already kept open his right to file this application for amendment as and when the value of the damage was known. On the other hand Mr. Shah learned counsel for the respondent submits that the claim for damages was an entirely different cause of action for which the plaintiff may file a separate suit. He further submits that if the amendment is allowed it shall oust the jurisdiction of the court and it will also bring a cause of action which has already become time barred. The learned counsel has also submitted that the trial court in its order has given reference to Suit No. 53 of 1992. On this Mr. Bharda learned counsel for the plaintiff-petitioner submits that so far as the filing of the suit is concerned, the same has been dismissed for want of prosecution. He has also shown me certified copy of the order. With respect to jurisdiction it is submitted by Mr. Bharda that there will be no change of jurisdiction by the court inasmuch as the suit is being tried by Civil Judge(S.D.), Navsari which has a jurisdiction even to try the suit having admission of Rs. 1,50,000/-.

Having heard the learned counsel, in my view this revision deserves to be accepted. In a suit for light and air a plea can always be raised with respect to compensation. Therefore, the learned judge has committed illegality in saying that the allowing of amendment will change the nature of the suit. So far as the question of limitation and jurisdiction raised by the respondent is concerned, prima facie there appears to be no substance therein. However, this aspect is kept open after the amendment. It will be open for the respondent-defendant to raise appropriate plea in that regard.

In view of the aforesaid, this revision application is allowed and the impugned order dated 5.4.1997 passed by the Civil Judge(S.D.) is quashed and set aside. Application for amendment Exh. 21 is granted on payment of cost of Rs. 2000/-. The petitioner will carry out the amendment within a period of four weeks.

The defendants will be allowed to file written statement
to the plea raised in the suit. Rule is made absolute.

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